**Scapino Steel Erectors, Inc.** ***and*** **Local Union No. 292, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO.** Case 7–CA–43137

August 1, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND COWEN

On April 10, 2001, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.[1]

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to post a bond with the Union's trusts and by failing to respond to the Union's request for certain information. We agree, for the reasons stated by the judge. In his exceptions, the General Counsel contends that the judge erred in failing to make additional factual findings and conclusions of law pursuant to Section 102.45 of the Board's Rules and Regulations despite the record evidence before him. Thus, the General Counsel contends that the judge erred by failing to find that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to pay the wage rates set forth in the Union's collective-bargaining agreement and by refusing to make the contractually-mandated fringe benefit contributions as alleged in the amended consolidated complaint.

For the reasons set forth below, we find merit in the General Counsel's exceptions.

## I. RELEVANT FACTS

In December 1999,[2] the Respondent was erecting a pre-engineered metal building in Mishawaka, Indiana, for Jordan Ford/Toyota. On the morning of December 10, Jeffery Bailey, the Union's business agent, and three other union members were participating in area standards picketing at the Mishawaka jobsite. As workers from other crafts arrived at the jobsite, they refused to cross the Union's picket line. To resolve the situation, John Scapino signed the Union's contract as well as two fringe benefit participation agreements. Two union members commenced working at the Mishawaka jobsite that morning. The Respondent paid the two workers union scale wages and also made the appropriate contributions to the Union's fringe benefit funds.

The contract states that its term expires May 31, 2002, and states that it covers all "field erection and construction work traditionally performed by and coming under the jurisdiction of the Association." The contract specifies the nature of that work and the geographic territory covered by the contract. It also sets forth the wage rates of the individuals performing work within the Union's jurisdictions and the signatory employer's obligation to make payments to the fringe benefit trusts.

At trial, the Respondent stipulated that since the Jordan/Toyota job in Mishawaka, throughout 2000, and as of that day (February 6, 2001), it performed field erection and construction work within the Union's work and territorial jurisdictions as set forth in the contract. Scapino also admitted at trial that the Respondent employed individuals who performed this work and that with the exception of the two union members who worked on the Jordan/Toyota job in Mishawaka, it did not pay those individuals the wages specified in the contract, nor did it make the contractually-mandated fringe benefit contributions.

## II. THE JUDGE'S DECISION

Based on the record evidence, the judge concluded that on December 10, the Respondent signed an enforceable 8(f) contract, which was binding on the parties through May 31, 2002. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). The judge rejected the Respondent's argument that it was no longer bound by the contract because the parties had intended that the contract apply only to the Jordan/Toyota job in Mishawaka. Finding no evidence of any contrary oral understanding between the parties with respect to the term of the contract, the judge stated that even if such evidence existed, under the parol evidence rule, it could not be credited, because the contract was unambiguous. See *Sansla, Inc.*, 323 NLRB 107, 109 (1997); *W. J. Holloway & Son*, 307 NLRB 487, 489 (1992).

Having determined that the contract was enforceable, the judge concluded that the Respondent had refused to honor it. Specifically, he found that the Respondent did not post a bond with the Union's trusts, or respond to the

[1] We shall modify the judge's recommended Order in accordance with our decision in *Ferguson Electric Co.*, 335 NLRB No. 15 (2001). Further, we shall substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

[2] All dates are in 1999, unless stated otherwise.

Union's request for certain information, thus violating Section 8(a)(5) and (1) of the Act.

The judge declined, however, to rule on the complaint allegation of whether the Respondent violated the Act when it failed and refused to pay the wage rates and make the fringe benefit contributions mandated by the contract and the fringe benefit participation agreements. Instead, the judge decided that the matter was best left to a future compliance proceeding, because the agreement was "ambiguous as to whether the Respondent was required to pay union scale wages and/or utilize the Union's hiring hall."

## III. ANALYSIS

Based on the uncontroverted record evidence, we agree with the General Counsel that the judge erred by not concluding that the Respondent violated Section 8(a)(5) and (1) of the Act. First, as the judge correctly found, the evidence established that the Respondent was bound by an unambiguous 8(f) contract until May 31, 2002. Next, the Respondent stipulated that after it signed the contract on December 10, 1999, it continued to perform field erection and construction work within the Union's work and territorial jurisdictions. Finally, Scapino admitted that the Respondent employed individuals who performed such work and that with the exception of the two union members who had worked on the Jordan/Toyota job in Mishawaka, the Respondent had not paid any of those individuals the wages specified in the contract, nor did it make the contractually-mandated fringe benefit contributions.

Contrary to the judge, we disagree that the contract is ambiguous as to whether the Respondent is required to pay union scale wages and to utilize the Union's hiring hall. With respect to paying union scale wages, a review of the contract reveals that a signatory employer, such as the Respondent, must pay specified wage rates for certain job classifications, i.e., apprentice, journeyman, and foreman. The Respondent stipulated that it performed work covered by the contract and admitted that it failed to pay those individuals who performed that work the wages specified in the contract or make the appropriate fringe benefit contributions. That the Respondent denominated its workers differently than the contract's job classifications does not create an ambiguity in this context.

As to whether the Respondent is required to utilize the Union's hiring hall, the complaint contains no such allegation. Furthermore, a review of the contract reveals no specific reference to a hiring hall. Although the contract contains an "Equal Employment Opportunity Clause" that provides that the local union shall establish and maintain open and nondiscriminatory employment referral lists for the use of members and applicants desiring employment on work covered by the contract, we see no ambiguity here. No one testified about a hiring hall or a referral list and no issue related to compliance with hiring hall or referral list provisions was raised by any of the parties.

Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to pay the wage rates set forth in the Union's collective-bargaining agreement and by refusing to make the contractually-mandated fringe benefit contributions.[3]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Scapino Steel Erectors, Inc., Edwardsburg, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to pay all unit employees the wage rates set forth in its collective-bargaining agreement with the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 292.

(b) Refusing to make pension and other fringe benefit contributions required by the collective-bargaining agreement and accompanying fringe benefit participation agreements on behalf of all unit employees.

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[3] Advancing an argument not made by the Respondent, our dissenting colleague would find no violation, because the Board should not decide cases where "the question is merely one of contract interpretation or enforcement." It is certainly true that where the dispute is "solely one of contract interpretation," the Board "will not attempt to determine which of two equally plausible contract interpretations is correct." *Thermo Electron Corp.*, 287 NLRB 820 (1987), citing *NCR Corp.*, 271 NLRB 1212 (1984). See also *Allied Signal, Inc.*, 330 NLRB 1201, 1204 (2000) (discussing "sound arguable basis" standard). But this is not such a case.

Here, the Respondent—relying on parol evidence that, if credited, would be inconsistent with the collective-bargaining agreement—argues that the agreement cannot be applied to the jobsites in question. The jobsite to which the Respondent would limit the agreement's application, in turn, no longer exists. The Board has not hesitated to decide cases posing closely similar issues. See, e.g., *Sommerville Construction Co.*, 327 NLRB 514 (1999), enfd. 206 F.3d 752 (7th Cir. 2000). It is clear that the Respondent had no intention of complying with the contract, including its core economic obligations, at any of the jobsites in question. A controversy of this sort is fundamentally different from a dispute over the meaning of a particular contract provision because it goes to the heart of the collective-bargaining relationship. See *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975) (rejecting employer's argument that decision not to adhere to contractual wage rate was breach of contract, but not unfair labor practice).

Accordingly, we find, contrary to our colleague, that the Respondent has committed an unfair labor practice within the meaning of Sec. 8(a)(5) of the Act.

(c) Refusing to post a bond with the Union's trusts.

(d) Refusing to provide the Union with the requested relevant information.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Make whole, with interest, all unit employees for any losses they may have suffered as a result of the Respondent's unlawful failure and refusal to pay the wage rates set forth in the collective-bargaining agreement.

(b) Make all fringe benefit fund contributions, and make all unit employees whole for any expenses resulting from the Respondent's failure to make the required pension and other fringe benefit contributions, with interest, as required by the collective-bargaining agreement and the accompanying fringe benefit participation agreements.

(c) Post a bond with the Union's trusts.

(d) Provide the Union with the information requested on July 27, 2000.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Edwardsburg, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, been purchased or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent since January 2000.

(g) File with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 1, 2002

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| Peter J. Hurtgen, | Chairman |
| Wilma B. Liebman, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER COWEN, dissenting.

Unlike my colleagues, I would not find that the Respondent violated Section 8(a)(5) of the Act by failing to adhere to certain provisions of its Section 8(f) contract with the Union.

The judge stated that the only issue in this case is whether the parties' agreement is enforceable and, if so, what remedial action is warranted for the Respondent's refusal to honor its terms. Thus, the issue in this case is merely a question of contract interpretation and enforcement. In my view, the Board should not be involved in such questions, and the parties should be left to resolve their dispute through traditional contract enforcement mechanisms. *See United Telephone Co. of the West*, 112 NLRB 779, 782 (1955) ("The Board is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its terms.").

The judge, however, did not dismiss the complaint, but proceeded to interpret the scope of the parties' agreement, find that the Respondent breached certain aspects of the agreement, and conclude that the Respondent thereby violated Section 8(a)(5) and (1) of the Act. My colleagues compound this error not only by adopting the violations found by the judge, but also by finding that the Respondent breached other aspects of the contract and thereby further violated Section 8(a)(5) and (1) of the Act.

I do not suggest that the Board never has a role in reviewing the validity, scope, or enforceability of a collective-bargaining agreement. If a contract dispute presents an issue of statutory interpretation or an issue within the Board's primary jurisdiction, the Board has a duty to express itself on those issues. However, where no such issue is present, and the question is merely one of contract interpretation or enforcement, the Board should not insert itself into such disputes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Congress did not intend for the Board to become embroiled in contractual disputes of the sort before us today. As the framers of the Taft-Hartley Act stated, and the Board has long recognized,[1] "[o]nce parties have made a collective-bargaining contract, the enforcement of that contract should be left to the usual process of the law and not to the National Labor Relations Board."[2] Simply put, mere breaches of contract are not unfair labor practices.

Nothing about the instant case justifies my colleagues' deviation from this longstanding principle. The only dispute here was whether the parties' 8(f) contract applied beyond the Jordan/Toyota jobsite, and therefore, whether the Respondent was bound to the contract with respect to other jobsites. Having interpreted the contract and finding that the Respondent was bound to the agreement beyond the single site, my colleagues find unlawful under the Act the Respondent's failure to abide by the contractually mandated terms. I disagree. I would simply find these alleged failures to amount to mere breaches of contract, enforceable through traditional contract enforcement mechanisms.[3]

In sum, absent other issues not present in this case, the question of whether the parties intended their agreement to be project-specific is not the type of question that would justify the Board's interjecting itself into this dispute. Thus, I would dismiss the complaint, and leave the parties to resolve their dispute through traditional contract enforcement mechanisms.

[1] See, e.g., *United Packinghouse Workers of America*, 89 NLRB 310, 317, fn. 10 (1950); *United Telephone Co. of the West*, supra.

[2] H.R. Cong. Rep. No.510, 80th Congress, 1st Sess. 42, I Leg. Hist. LMRA 546 (1947). See also *NLRB v. Strong*, 393 U.S. 357, 360 (1969): "[T]he Board has no plenary authority to administer and enforce collective bargaining contracts. Those agreements are normally enforced as agreed upon by the parties, usually through grievance and arbitration procedures, and ultimately by the courts."

I recognize that the Board "may proscribe conduct which is also a breach of contract remediable as such by arbitration and in the courts." Id. at 359. See also *NLRB v. C&C Plywood Corp.*, 385 U.S. 421, 428 (1967). I simply do not view the instant case as involving the types of breaches that require the Board to exercise its jurisdiction over unfair labor practices instead of requiring the parties to grieve/arbitrate the matter or litigate it in court. See, e.g., Sec. 301 of the LMRA.

[3] It is notable that neither the judge nor my colleagues find that the Respondent has repudiated its contract or its bargaining relationship with the Union. Moreover, the record simply does not reflect that the Respondent intended to repudiate its contract with the Union. Thus, this case does not present the question of whether a respondent violates the Act by repudiating a Sec. 8(f) agreement during its term, and I express no view regarding that issue. Compare *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), with *Industrial TurnAround Corp. v. NLRB*, 115 F.3d 248 (4th Cir. 1997).

Dated, Washington, D.C. August 1, 2002

William B. Cowen, Member

NATIONAL LABOR RELATIONS BOARD

## APPENDIX
## NOTICE TO EMPLOYEES
## POSTED BY ORDER OF THE
## NATIONAL LABOR RELATIONS BOARD
## An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to pay all unit employees the wage rates set forth in the collective-bargaining agreement.

WE WILL NOT refuse to make pension and other fringe benefit contributions required by the collective-bargaining agreement and accompanying fringe benefit participation agreements on behalf of all unit employees.

WE WILL NOT refuse to post a bond with the Union's trusts.

WE WILL NOT refuse to provide the Union with the requested relevant information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, with interest, all unit employees for any losses they may have suffered as a result of our unlawful failure and refusal to pay the wage rates set forth in the collective-bargaining agreement.

WE WILL make all fringe benefit contributions required by the collective-bargaining agreement and the accompanying participation agreements.

WE WILL post a bond with the Union's trusts.

WE WILL provide the Union with the information it requested on July 27, 2000.

SCAPINO STEEL ERECTORS, INC.

*Steven E. Carlson, Esq.*, for the Acting General Counsel.
*Charles S. Leone, Esq. (Botkin & Leone)*, South Bend, Indiana, for the Respondent.

## DECISION[1]

### I. STATEMENT OF THE CASE

JERRY M. HERMELE, U.S. Administrative Law Judge. On December 10, 1999, the Respondent, Scapino Steel Erectors, Inc., signed a collective-bargaining agreement pursuant to Section 8(f) of the National Labor Relations Act with the Union, Local Union No. 292, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO. But in complaints dated August 28 and October 6, 2000, the Acting General Counsel alleges that the Respondent violated Section 8(a)(1) and (5) of the Act by failing, since January 2000, to honor this agreement. In answers of September 11 and October 23, 2000, however, the Respondent denied this allegation.

This case was tried on February 6, 2001, in Niles, Michigan, during which the Acting General Counsel and the Respondent called four witnesses each. Both parties then filed briefs on March 12, 2001.

### II. FINDINGS OF FACT

The Respondent, based in Edwardsburg, Michigan, erects prebuilt metal structures for residential, industrial, and commercial customers. Annually, the Respondent earns over $1,000,000, of which over $50,000 comes from customers outside of Michigan. The Respondent's President, John Scapino, founded his nonunionized company in 1979 (GC Exhs. 1(h), (j); Tr. 58, 66–68). The Company has approximately 10 workers, consisting of laborers and foremen, and performs work within the jurisdiction of the Union in north central Indiana, and Cass and Berrien Counties in southwest Michigan (Tr. 21, 67, 72–73).

In the spring of 1999, Jeffery Bailey, the Union's business agent, met with Scapino to ask whether the Respondent would be interested in recognizing the Union. Scapino said he would think about it (Tr. 18–20). Then in late 1999, Bailey heard that the Respondent was performing work at a jobsite in Mishawaka, Indiana. So on December 10, 1999, Bailey set up a picket line, with the signs thereon saying that the Respondent did not pay union wages. Most of the other workers did not cross the picket line that morning, but Todd North, the Respondent's foreman, did. The contractor on the jobsite called Scapino and told him about the picket line. Scapino then called North and then Bailey. Scapino and Bailey agreed to meet at the jobsite (Tr. 20–23, 73–75, 106–107).

Upon arriving at the jobsite, Scapino asked how this problem could be solved. Bailey responded that Scapino should sign an agreement between the Union and the Michiana Builders Association, Inc., South Bend, Indiana. The agreement ran from June 1, 1999 to May 31, 2002. Bailey also wanted him to sign a "Participation Agreement" regarding the Union's benefit, pension, and annuity trust. Bailey said that if Scapino signed, the Union would provide manpower for the Respondent at the jobsite. Scapino testified that he needed more men on the jobsite to complete work sooner, having only North and one other worker there. Scapino did not read the written agreements that Bailey showed him and Bailey said they were self-explanatory. Scapino then signed both, thinking that "I was doing them a favor by putting their unemployed people to work. . . ." But Scapino also signed because of the effective shutdown of the jobsite by the picketers. Scapino only signed his name to the main agreement but he signed the trust agreement on behalf of his Company, as President. The meeting with Bailey took about 15 minutes (GC Exhs. 2–3; Tr. 23–29, 31, 75–76, 81, 89–90, 97).

Work then resumed on the jobsite. The Union provided two men for Scapino, the first of whom left after one day. Although he understood that he could call Bailey if he needed more help, Scapino never called the Union for a replacement because "the picket line was gone. The problem was over." The second union worker stayed on through the end of the job, which was about five days later (Tr. 78–80, 98). Scapino paid both union workers union-scale wages and made $243 in pension contributions for both men for their brief tenure (GC Exh. 5; Tr. 59, 82).

On January 27, 2000, the Union's trust fund (Iron Workers District Council of Southern Ohio & Vicinity Benefit Trust/Pension Trust/Annuity Trust) wrote Scapino requesting a bond or a letter of intent to pay weekly contributions for one year, which is standard practice for a new employer to provide. Scapino called the trust fund's administrative worker, Helen Clark, on February 21 and told her he would obtain a bond. Scapino then called his insurance agent to obtain a surety bond but Clark never received it (GC Exh. 6; Tr. 41–46, 87). In March and April 2000, Scapino met twice with Bailey and other union officials about signing up his employees with the Union (Tr. 79, 114–115). Then on July 27, the Union's lawyer sent Scapino a letter requesting:

> A list of all jobs you have performed since the date you signed the Contract to the present date;
>
> A listing including names, addresses, and telephone numbers of all individuals performing bargaining unit work under the Contract from the date you signed the Contract to the current date; and
>
> A listing of all hours worked by all bargaining unit employees performing work covered under the Contract from the date you signed the Contract until the current date.

This information was requested "so that the Union can determine whether there has been compliance by you with the Contract. "Scapino did not respond (GC Exh. 7; Tr. 43–56). Indeed, other than the two Union workers he used at the Mishawaka jobsite in December 1999, Scapino did not follow the agreements he signed (Tr. 60). He did file a petition with the Regional Director for Region 7 seeking a representation election among his employees, but the Union filed a charge on June 13, 2000 claiming that the Respondent had refused to honor the two agreements signed on December 10, 1999 (GC Exh. 1(a); Tr. 86).

[1] Upon any publication of this Decision by the National Labor Relations Board, unauthorized changes may have been made by the Board's Executive Secretary to the original Decision of the Presiding Judge.

### III. ANALYSIS

Section 8(f) of the Act allows a union representing employees in the building and construction industries to enter into a collective-bargaining agreement with an employer without first having attained the majority support of the employer's employees. *Laborers Local 1184*, 296 NLRB 1325, 1328 (1989). The Respondent signed such an agreement with the Union in the instant case on December 10, 1999. The only issue is whether the agreement is enforceable and, if so, what remedial action is warranted for the Respondent's refusal to cooperate with the Union after the date of signing.

The Respondent's primary defense to enforceability is the claim that Scapino only intended to apply the agreement to the Mishawaka job. To argue this, however, parole evidence of an oral agreement, which would vary the terms of the written agreement, would have to be credited. But such evidence outside the four corners of an existing written agreement is considered only when there is "sufficient ambiguity" regarding the terms of the written agreement. See *Sansla, Inc.*, 323 NLRB 107, 109 (1997); *RPM Products*, 217 NLRB 855 (1975). Here, though, there is nothing ambiguous in the agreement Scapino signed. Moreover, Jeffery Bailey, the Union's business agent who proffered the agreement to Scapino on December 10, 1999, did not testify as to any such narrow understanding regarding the scope of the agreement. And Scapino's own testimony belies the claim that he signed the agreement in order to avail his Company of the Union's additional manpower for the Mishawaka jobsite only. Indeed, Scapino admitted that even though he was shorthanded on the Mishawaka jobsite, he did not ask Bailey for additional men after one of the two union workers left after working just one day because "the picket line was gone. The problem was over." Accordingly, the written agreement speaks for itself in this case and it is binding on the parties, through May 31, 2002, and not subject to unilateral repudiation by the Respondent. *John Deklewa & Sons*, 282 NLRB 1375, 1395 (1987). Compare *Operating Engineers Local 3 (Joy Engineering)*, 313 NLRB 25 (1993) (extrinsic evidence allowed to determine actual identity of parties to agreement).

But the Respondent did not honor the agreement. Specifically, it did not post a bond with the Union's trust fund, or respond to the Union's July 27, 2000 information request, thus violating Section 8(a)(1) and (5) of the Act. *W. J. Holloway & Son*, 307 NLRB 487 (1992). Therefore, it will be required to do both of these things. The General Counsel also alleges that the Respondent failed to pay union scale wages to its employees and make the appropriate fund contributions, both as required by the 8(f) agreement. But the Respondent counters that its workers are merely supervisors or laborers, not apprentices or journeymen as set forth in the written agreement, and thus are not covered by its provisions. This is a matter, however, best left to any future compliance proceeding, inasmuch as the agreement is also, in the Presiding Judge's view, ambiguous as to whether the Respondent is required to pay union scale wages and/or utilize the Union's hiring hall. Compare *Sommerville Construction Co.*, 327 NLRB 514 (1999) ("[t]he parties do hereby adopt the latest Agreement . . . and agree to be bound by all of the terms and conditions thereof. . . ."); *Sansla, Inc.*, 323 NLRB 107, 109 (1997) ("[t]he employer recognizes the union as the sole collective-bargaining agent for its employees concerning wages, hours and all other terms and conditions of employment in respect to the classification of work referred to in this Agreement.").

### IV. CONCLUSIONS OF LAW

The Respondent, Scapino Steel Erectors, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The Union, Local Union No. 292, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

The Respondent violated Section 8(a)(1) and (5) of the Act since January 2000 by failing to post a bond as required by the Section 8(f) agreements signed on December 10, 1999, as alleged in paragraphs 10 and 13 of the Acting General Counsel's amended complaint.

The Respondent violated Section 8(a)(1) and (5) of the Act by failing, since August 11, 2000, to provide the information requested by the Union, as alleged in paragraphs 12 and 13 of the amended complaint.

The unfair labor practices of the Respondent, described in paragraphs 3 and 4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Accordingly, IT IS ORDERED[2] that the Respondent, Scapino Steel Erectors, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing to adhere to and implement the terms and conditions of the Agreement between the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 292 and the Michiana Builders Association, Inc., South Bend, Indiana, effective from June 1, 1999, to May 31, 2002; and

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Do the following:

(a) Adhere to and implement the terms and conditions of the Agreement between the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 292 and the Michiana Builders Association, Inc., South Bend, Indiana, effective from June 1, 1999 to May 31, 2002, making its employees covered by that agreement, if any, whole for any loss of wages suffered since December 10, 1999, in the manner provided by *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987);

[2] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make all appropriate fringe benefit fund contributions, in the manner provided by *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and make employees whole for any expenses resulting from the Respondent's failure to make required benefit fund payments, pursuant to *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), with interest to be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987);

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order;

(d) Provide the Union with the information requested on July 27, 2000;

(e) Post at its facility in Edwardsburg, Michigan copies of the attached notice marked "Appendix."[3] Copies of the notice on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, been purchased or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent since January 2000; and

(f) File with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. April 10, 2001

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to adhere to and implement the terms and conditions of the Agreements we signed on December 10, 1999 with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to and implement the terms and conditions of the Agreement we signed with the Union on December 10, 1999, including making employees whole for any loss of earnings and benefits.

WE WILL make all appropriate trust fund contributions required by the Agreements.

WE WILL provide the Union with the information it requested on July 27, 2000.

SCAPINO STEEL ERECTORS, INC.